

ADMINISTRATIVE POLICY



STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

**TITLE: LAW RESTRICTING MANDATORY OVERTIME
FOR NURSES**

NUMBER: ES.A.11

CHAPTER: [RCW 49.28.130](#) through RCW 49.28.150

**ISSUED: 8/28/02
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ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

1. What is the purpose of this law?

The purpose of this law – RCW [49.28.130](#) through [RCW 49.28.150](#) – is to restrict health-care facilities from requiring registered nurses and licensed practical nurses to work overtime in excess of the established schedules or agreed upon workweek. Reasonable safeguards should be in place to limit overtime and maintain appropriate patient care. The rationale for this law is to protect health-care workers and promote patient safety and quality health care.

2. What does the law say?

No RN or LPN of a health-care facility covered by this law may be required to work overtime. Attempts to compel or force employees to work overtime are prohibited, except under certain circumstances that are described below. Employees may choose to work overtime, voluntarily, but refusal to work overtime is not grounds for discrimination, dismissal or discharge or any other penalty adverse to the employee.

3. Who is covered by this law?

Those covered are licensed practical nurses and registered nurses who work in health-care facilities as defined by this law, involved in direct patient care or clinical services, and who receive an hourly wage. See [RCW 49.28.130\(1\)](#). In addition to the “typical” bedside staff nurse, there are many other examples of nursing staff receiving an hourly wage and who are also covered. The following list provides some **examples** of positions that provide direct

patient care or clinical services that may be covered. The list is not all-inclusive. *These and other positions are covered if the employee is an RN or LPN who receives an hourly wage:*

- Diabetic educators
- Staff educators
- Clinical specialists
- Pain-management nurses
- Research nurses
- Nurses in various labs – sleep, cardiac, GI, etc.
- Case managers
- Telephone-consulting nurses

4. Which health-care facilities are included?

Hospices; acute-care hospitals; rural health-care facilities; private psychiatric facilities, including some that may be operated by local government; and nursing homes or home-health agencies operating under a licensed health-care facility, which operate on a 24-hours-a-day, 7-days-a-week basis. See [RCW 49.28.130\(3\)](#). Hospices include hospice-care centers and in-home hospice services. Many hospitals may have a long-term-care wing that operates under the license of the hospital and not as a separate nursing home; these will be covered. There are some instances where the nursing home is a separate structure and operates under the license of the hospital; these will also be covered (a list of these facilities is available upon request).

5. Which facilities are not covered?

Not covered are state psychiatric hospitals and other state facilities operated by the Department of Social and Health Services or Department of Corrections. Also, since home-health agencies do not have the legal authority to operate under the license of another health-care facility, there will be no instances where they will be covered by this law. Many nursing homes, although owned and operated by a hospital or medical center, still operate under their own license and not the license of another health-care facility; these facilities are not covered.

6. What is meant by “overtime”?

“Overtime” means hours worked in excess of an agreed upon, predetermined, regularly scheduled shift not to exceed 12 hours in a 24-hour period or 80 hours in a consecutive 14-day period. See [RCW 49.28.130\(4\)](#). The criteria for what constitutes overtime is determined by an employee’s usual shift length. For example, if an employee is regularly scheduled to work an 8-hour shift, anything beyond that is considered overtime for the purposes of this law. The individual’s status as “part time” or “full time” does not affect coverage under this law.

7. When does the law not apply?

This law does not apply to mandatory overtime work that occurs:

- Because of unforeseeable emergent circumstances;
- Because of prescheduled on-call time;
- When the employer documents reasonable efforts to obtain staffing; and
- When an employee is required to work overtime to complete a patient-care procedure in progress, where it would be detrimental to the patient if the employee left. See [RCW 49.28.140](#).

8. What is meant by “unforeseeable emergent circumstance”?

This includes:

- Any unforeseen declared national, state or municipal emergency;
- When a health-care facility disaster plan is activated; or
- Any unforeseen disaster or other catastrophic event that substantially affects or increases the need for health-care services. See [RCW 49.28.130\(7\)](#).

9. What is meant by “prescheduled on-call time”?

On-call time means time spent by an employee who is not working on the employer's premises, but who is compensated for agreeing to be available or who, as a condition of employment, has agreed to be available on short notice, if needed. See [RCW 49.28.130\(5\)](#). The on-call time must be prescheduled to be exempt from this law. See [RCW 49.28.140](#). A facility may not place an employee on call in a last-minute effort to cover an open shift. Rather, the employee must be scheduled for “on-call” in accordance with the facility's normal scheduling procedures and/or collective bargaining agreement. Examples where such prescheduled on-call time is used include surgical procedures or specialty diagnostic procedure labs like gastroenterology and cardiology. Also, an example of an in-home hospice agency on-call situation includes when staff members are regularly prescheduled for on-call shifts to cover after-hours triage and patient visits from 5 p.m. to 8 a.m. and on weekends, in some situations.

A different example of on-call status that may occur is when, due to a low census (i.e., patient count), some staff members are sent home and placed “on-call” to be available on a stand-by basis in the event the census changes; since the actual shift has not been worked, overtime is unlikely to be an issue in this case.

10. What is meant by “reasonable efforts”?

Employers must document that other options for staffing have been pursued, including:

- Seek qualified staff who are willing to volunteer for extra work;
- Contact qualified staff who have made themselves available for extra work;
- Seek the use of qualified per diem staff; and
- Seek qualified temporary personnel, as permitted by law or bargaining agreement, and when regularly used by the employer. See [RCW 49.28.130\(6\)](#).

This suggests that a facility has engaged in some process or pre-planning for the situations when unexpected staffing shortages occur. It is recognized that unanticipated, last-minute absences such as same-day sick calls, or increases in staffing demands due to a change in census, may occur which will create time constraints for implementing a facilities staffing plan. Reasonable effort does **not** include using mandatory overtime to fill vacancies resulting from chronic staff shortages.

11. What constitutes a chronic staff shortage?

The following is a general description for guidance purposes only. It is recognized that multiple factors impact what determines staffing adequacy and this will vary among facilities. To be chronic, such vacancies must be either (1) long-standing or (2) frequently recurring. A long-standing vacancy would result from a position that is open and not filled by the facility. So for example, where the full complement of nurses on an ICU is 12 and there are two unfilled positions, this could result in a “chronic” blank spot in the schedule. By contrast, “frequently recurring” vacancies are the kind of blanks that result from staff vacations, medical leaves, leaves of absence and other absences that should be readily anticipated by the facility. The reasonable efforts exemption in the law does not apply to overtime work that is used to fill vacancies resulting from chronic staff shortages.

The following are some examples of situations that are likely to arise:

Staffing Situation	Can the facility use the reasonable efforts exemption?
Unfilled positions resulting in holes in the schedule	No
Anticipated gaps in the schedule due to planned vacation, medical leave or leave of absence	No
Frequently recurring increases in census such that the scheduled complement of nurses is inadequate	No
Unanticipated increases in census that demands additional staffing	Yes
Same-day sick call or other unanticipated absence	Yes

12. What are some examples of procedures an employee may be asked to complete in overtime?

The law does not apply when an employee is required to work overtime to complete a procedure already in progress where the absence of the employee could have an adverse effect on the patient. See [RCW 49.28.140\(3\)\(d\)](#). The following are **examples** and the list is not all-inclusive:

- Outpatient surgical or specialty procedures, such as those performed in a cardiac or gastroenterology lab that is located within a 24-hour hospital facility.
 - In outpatient surgery or specialty clinics that operate with a single shift, an individual may have to stay long enough for the patient to recover and be released.
- Emergency code in progress (e.g., trauma, cardiac arrest, stroke)
- Other examples include, when the nurse:
 - Needs to complete documentation after an emergency situation;
 - Has skills that no other nurse would have; or
 - Is the only nurse who has the knowledge of some piece of equipment or procedure.

13. What is the enforcement role for the Department of Labor and Industries?

Effective June 13, 2002, the department is required to investigate complaints of violations. The law authorizes the department to issue and enforce civil infractions in accordance with chapter 7.80 RCW. It establishes a penalty schedule of \$1,000 for each of the first three infractions, \$2,500 for the fourth and \$5,000 for any subsequent violations. See [RCW 49.28.150](#).

14. How do you file a complaint regarding mandatory overtime?

Fill out and submit a complaint form, which is available online at www.lni.wa.gov/forms/pdf/700027af.pdf or at any of L&I's 22 [field-service offices](#). At the top of page 1, please write "Nurses' Overtime" directly below "Complaint Report." Then, at the bottom of page 1, please include details of the complaint, including:

- Your occupation, i.e., RN or LPN;
- If you receive an hourly wage;

- The type of institution where you are employed, i.e., hospital, hospice, facility for mental health care or drug and alcohol treatment, or a nursing home operated by a hospital; and
- The circumstances in which you were required to work overtime.

Return the complaint form to the address on the form:

Department of Labor and Industries

Employment Standards Program
P.O. Box 44510
Olympia WA 98504-4510

15. Where can I turn if I have questions?

Contact any Employment Standards field office location, www.lni.wa.gov/Main/ContactInfo/OfficeLocations, the Olympia central office at 360-902-5316, or the Industrial Relations specialist at 360-902-6041.

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